

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LANCASTER SCHOOL DISTRICT AND
WESTSIDE UNION SCHOOL DISTRICT.

OAH CASE NO. 2013080208

ORDER GRANTING MOTION TO
DISMISS ISSUE TWO

On August 6, 2013 Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request¹ naming the Lancaster School District (LSD) and the Westside Union School District (Westside) as respondents. On August 23, 2013, Student requested leave to file an amended complaint (AC) prior to either of the respondents filing any responsive pleadings. OAH granted Student's request, and the amended complaint was deemed filed on August 30, 2013.

On September 9, 2013, Westside filed a Notice of Insufficiency (NOI) as to Student's complaint. On September 10, 2013, OAH, by the undersigned, found that Issues Two and Three of the AC were sufficient while Issue One was not sufficient.

On September 10, 2013, Westside filed a motion to dismiss Issue Two as the OAH is without jurisdiction to hear that issue. On September 12, 2013, OAH, by the undersigned, issued an order setting date for Student to file an opposition to Westside's motion to dismiss Issue Two. As part of the September 10, 2013 order, OAH deemed Westside's motion to apply to the AC since Issue Two in the complaint is identical to Issue two in the AC.

On September 11, 2013, Student filed a second amended complaint (SAC) which contained three issues. Issues Two and Three are identical to Issues Two and Three in both the AC and SAC.

On September 16, 2013, Student a pleading entitled "Dismissal Without Prejudice as to Problem [Issue] 2 as to Westside Union School District." In the pleading, Student states:

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

“This dismissal is without prejudice and without waiving any right to re-file this claim against Westside Union School District.”

OAH on its own motion will deem the September 10, 2013 motion to dismiss Issue Two as applicable to Issue Two of the SAC.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Part C of the IDEA (20 U.S.C. § 1431 et seq.) and the California Early Intervention Services Act (Gov. Code § 95000 et seq.) set forth eligibility and the provision of early intervention services for children aged birth to three years. California has designated that this program be administered under the direction of the Secretary of Health and Human Services and the Superintendent of Public Instruction. (Gov. Code § 95006.) California has set up a complaint process through the Department of Development Services (DDS) to handle resolution and investigation of complaints which may be made by any individual or organization. (17 CCR §§ 52170 subd. (c) and (d) and 52171.)

In Issue Two, Student alleges that the December 10, 2010 Individualized Family Service Plan (IFSP) provided that Student’s parents would be reimbursed for Auditory Verbal Therapy (AVT), and that the respondents failed to reimburse Student’s parents for AVT services obtained. Because Issue Two involves an IFSP, OAH lacks jurisdiction over the issue as set forth above. Since OAH does not have jurisdiction to hear Issue Two, Student’s withdrawal of that issue without waiving any right to refile the claim fails to respond to Westside’s motion. Thus, Westside is entitled to a ruling of its motion.

Since OAH lacks jurisdiction over the subject of Issue Two, the Administrative Law Judge (ALJ), on his own motion, dismisses Issue Two in its entirety. Student in the September 16, 2013 pleading limited the withdrawal of Issue Two only to Westside.

ORDER

1. Westside Union School District's Motion to Dismiss Issue Two is GRANTED and Issue Two is dismissed as to Westside Union School District..
2. On the motion of the ALJ dismisses Issue Two in its entirety.
3. The matter will proceed as scheduled.

IT IS SO ORDERED.

Dated: September 17, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings